

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. 98-168

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
FERNANDO B. SILVA, TERESINHA SILVA, DUARTA M. SILVA,
FRED A. SILVA, GERMANA M. SILVA, ALBERTINA M. SILVA,
JOHN, EDDIE, FERNANDO AND MANUEL NASCIMENTO
SILVA FARMS DAIRY
STANISLAUS COUNTY

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Board) finds, with respect to Fernando B. Silva, Teresinha Silva, Duarte M. Silva, Fred A. Silva, Germana M. Silva, Albertina S. Silva, John Nascimento, Eddie Nascimento, Fernando Nascimento, and Manuel Nascimento (hereafter collectively referred to as Discharger), acts or failure to act, the following:

1. Fernando B. Silva, Teresinha Silva, Duarte M. Silva, Fred A. Silva, Germana M. Silva, and Albertina S. Silva own the Silva Farms Dairy which is in T2S, R10E, MDB&M, at 8567 Rodden Road in Oakdale, Stanislaus County. The dairy is operated by John Nascimento, Eddie Nascimento, Fernando Nascimento, and Manuel Nascimento, conducting business as Manuel Nascimento and Sons Dairy. All ten parties will hereafter be referred to as "Discharger". Manure and wastewater generated at the dairy are discharged to approximately 190 acres of cropland. Both the dairy facility and the cropland are in assessor's parcel number 006-10-57.
2. In 1975, the Board adopted Waste Discharge Requirements (WDRs) No. 75-137 for the dairy facility. These WDRs were rescinded by Special Order No. 96-274, and the Discharger was ordered to comply with the General Waste Discharge Requirements Order No. 96-270 for Milk Cow Dairies.
3. Board staff documented discharges of wastewater and manured corral runoff from the dairy into the Dorsey Lateral on 28 October 1993, 25 January 1995, 15 March 1996, and 24 January 1997. Warden Philip McKay of the State Department of Fish and Game documented a discharge from the dairy into the Dorsey Lateral on 18 December 1995. None of these discharges occurred as a result of a 25-year, 24-hour storm. The discharges violated Orders No. 75-137 and 96-270.
4. In response to the violations, Cleanup and Abatement Order No. 97-711 was issued by Executive Officer of the Regional Board on 26 September 1997. Order No. 97-711 ordered the following:
 - "2. By 5 November 1997, submit a plan and timeline containing the proposed permanent modifications necessary to bring the entire facility (including corrals, ponds, cropland, and tailwater) into compliance with all prohibitions, specifications, and provisions of WDRs No. 96-270. The plan shall be prepared and signed by a California Registered Engineer. The plan shall list each prohibition, specification, and provision of WDRs No. 96-270 and state how and when compliance will be achieved with each item. Once approved by staff, the timeline shall become part of this Order and the due dates will be enforceable under this Order.
 3. Submit a manure management plan by 5 November 1997. The plan shall be prepared and signed by an agronomist who is approved by Board staff and shall provide site-specific information on the use, timing, and application of animal waste and other nutrients to cropland at the facility.
 4. By 5 November 1997, submit the Water Pollution Prevention Plan as described in, and required by, WDRs No. 96-270."

The Discharger has failed to submit any of the above technical reports as ordered, and no significant corrective action has been taken to alleviate the violations.

5. Section 13350 of the California Water Code states, in part:

“(a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board may be liable civilly in accordance with subdivision (d), (e) or (f)”

“(f) When there is no discharge, but an order issued by the regional board is violated, liability shall be imposed as follows:

Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) for a violation of this section in an amount which shall not exceed one thousand dollars (\$1,000), but shall not be less than one hundred dollars (\$100), for each day in which the violation occurs.”

6. On 3 June 1998, the Executive Officer issued a Complaint to the Discharger proposing a \$40,000 Administrative Civil Liability for the violation of C&A Order 97-711.
7. On 24 July 1998, in Sacramento, California, after due notice to the Discharger and other affected parties, the Board conducted a public hearing at which representatives of the Discharger appeared and evidence was received concerning the violations.
8. The Board, after hearing all testimony, determined the discharger is liable civilly and considered the following factors in determining the amount of the liability: “The nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in the business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require [Water Code Section 13327]”
9. The Board determined, with respect to the factors in Finding No. 8, the following:

The nature of the violation was that the Discharger violated C&A Order No. 97-711. The extent of the violation is that the Discharger failed to submit plans for permanent modifications necessary to bring the entire facility into compliance with all prohibitions, specifications, and provisions of WDRs No. 96-270. Permanent modifications necessary to bring the facility into compliance with WDRs No. 96-270 have not been implemented. The Discharger failed to submit a Water Pollution Prevention Plan as described in and required by WDRs No. 96-270. The gravity of the violation is that the Discharger has created a public health threat, and a threat to water quality in the Oakdale Irrigation District Dorsey Lateral and the Stanislaus River, and underlying groundwater. The Discharger has the ability to pay and remain in business. The Discharger did not attempt any cleanup of discharges. The Discharger has a history of violations and complaints. The Discharger is culpable in regard to the subject violations in that he has been notified of his failures to comply. The Discharger made temporary improvements in the fall of 1997, but the work performed was inadequate and can not be considered permanent. The Discharger has realized considerable savings from his failure to provide adequate waste management facilities. The failure of the Discharger to comply with the California Water Code has created an unfair advantage over dairies that do comply. Except for staff costs identified in Finding No. 12 associated with generation of the ACL Complaint and Order, the Board is not aware of other matters which need to be considered.

10. Water Code section 13350 authorizes the imposition of administrative civil liability for violations of a cleanup and abatement order. The maximum fine for each day of violation is \$1,000. In accordance with Administrative Civil Liability Complaint No. 98-502, the maximum liability is \$210,000.
11. A \$21,000 Administrative Civil Liability is appropriate based on the determinations in Finding No. 9.
12. Staff costs associated with the processing this complaint are approximately \$3,000.
13. Issuance of this order is exempt from the provisions of the California Environmental Quality Act (Public Resource Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.